

Exemption No. 7800

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

ED 101-1 A 10:22

In the matter of the petition of

EMPIRE AIRLINES

Regulatory Docket No. FAA-2002-11424 -9

for an exemption from § 121.345(c)
of Title 14, Code of Federal Regulations

GRANT OF EXEMPTION

By letter dated January 16, 2002, Mr. Norman E. Alexander, Associate Engineer, Federal Express Corporation, 2892 Airport Business Park, Memphis, Tennessee, 38118, petitioned the Federal Aviation Administration (FAA) on behalf of Empire Airlines (Empire) for an exemption from § 121.345(c) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit Empire to operate certain aircraft under part 121 without a TSO-C112 (Mode S) transponder installed in each aircraft.

The petitioner requires relief from the following regulation:

Section 121.345(c)(2) prescribes that air traffic control (ATC) transponder equipment installed after January 1, 1992, must meet the performance and environmental requirements of the appropriate class of Mode S transponder. This installation does not include—

1. Temporary installation of TSO-C74b or TSO-C74c substitute equipment during maintenance of the permanent equipment;
2. Reinstallation of equipment after temporary removal for maintenance; or
3. For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

The petitioner supports its request with the following information:

The petitioner states that a grant of exemption is in the public interest for safety and economic reasons. The petitioner notes that the ground sensor is an integral part of the Mode S regulation. The petitioner states that a grant of exemption would not adversely affect safety because without ground sensors, which are necessary for the enhanced operations of Mode S transponders, Mode S transponders provide no more benefits than advanced solid-state Mode C transponders.

The petitioner adds that a grant of exemption would economically benefit Empire and its customers because it would relieve the petitioner of installing Mode S transponders, which would be a financial burden. The petitioner maintains that if Empire is required to install the Mode S transponders, the additional expense would be passed on to the flying public.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent and any delay in acting on this petition would be detrimental to Empire.

The FAA's analysis/summary is as follows:

On January 29, 1987, the FAA issued Air Traffic Control Radar Beacon System and Mode S transponder Requirements in the National Airspace System Final Rule (52 FR 3380). In part, this rule requires that any newly installed aircraft transponder, used for operations under 14 CFR parts 121 and 135, before January 1, 1992, may be a Mode A transponder provided the transponder was manufactured prior to January 1, 1990; and that only Mode S transponders could be newly installed in these aircraft after January 1, 1992.

In 1995 the ground sensors necessary for Mode S transponders, as planned by the FAA, had not become fully operational. Without complete functioning ground sensors, the system capacity envisioned by the use of a Mode S transponder offered no reduction in ATC separation criteria or increase in traffic flow over that provided by a Mode C transponder. Therefore, the FAA began to reconsider the Mode S requirement. In the interim, the FAA issued a number of exemptions to individuals who were required by the above rule to install ATC transponders since the necessary ground components for the system were not available.

In May 1996 the FAA proposed to rescind the Mode S transponder requirement for all aircraft operations under part 135 and for certain aircraft operations under part 121 that are not required to have Traffic Alert and Collision Avoidance System (TCAS) II (61

FR 26036). The agency articulated several reasons for the proposed recission: (1) the FAA's revised strategy of multiple air-ground data links managed through an Aeronautical Telecommunications Network would remove the requirement for Mode S transponders; (2) operational experience with the Mode S ground sensors has shown that most surveillance enhancements can be achieved by the Mode S ground sensors with the present mixed population of airborne transponders; and (3) the use of Mode S transponders for aircraft, other than those required to have TCAS II, does not offer, nor is it expected to offer, any significant safety advantage in the current or future airspace environment. The proposal also noted that studies and analysis were being conducted on advanced methods of aircraft separation to support the FAA's goal of "free flight" and invited comment on whether future equipage of Mode S transponders should be mandatory for certain areas of operation.

Many Mode S ground sensors have become fully operational since the initial grants of exemption in 1995 and the issuance of Notice No. 96-5. Mode S ground sensors now cover most of the United States, including all major airports. However, even with the ground sensors in place, the FAA is reconsidering the comments submitted to the NPRM and its position on Mode S requirements in relation to the current aviation environment. Therefore, the FAA finds that it is currently not in the public interest to require certain individuals to purchase and install Mode S transponders at this time.

Please note that in an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's Internet-accessible Docket Management System (DMS), located at <http://dms.dot.gov>. This new docket system enables interested persons to view requests on, submit requests to, and download requests from the DMS in accordance with 14 CFR § 11.63. Future requests should be submitted through the DMS.

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, Empire Airlines is granted an exemption from 14 CFR § 121.345(c)(2) to allow Empire Airlines to operate certain aircraft under part 121 without a Mode S transponder installed in each aircraft, subject to the following conditions and limitations:

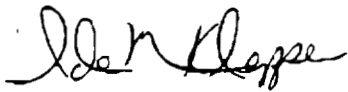
1. Any aircraft listed on Empire Airline's part 121 operations specifications on the date of issuance of this exemption may be operated when equipped with any TSO-C74b transponder or TSO-C74c transponder.

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2. Any other aircraft for which installation of a transponder is needed may be operated when equipped with any TSO-C74b transponder or TSO-C74c transponder, if notice is given to Empire Airline's principal operations inspector.

This exemption terminates on June 30, 2004, unless sooner superseded or rescinded.

Issued in Washington, DC, on June 6, 2002



Ida M. Klepper
Acting Director, Office of Rulemaking